

## Chapter 38

### Utah Indoor Clean Air Act

#### **26-38-1 Title.**

This chapter is known as the "Utah Indoor Clean Air Act."

Enacted by Chapter 281, 1994 General Session

#### **26-38-2 Definitions.**

As used in this chapter:

- (1) "E-cigarette":
  - (a) means any electronic oral device:
    - (i) that provides a vapor of nicotine or other substance; and
    - (ii) which simulates smoking through its use or through inhalation of the device; and
  - (b) includes an oral device that is:
    - (i) composed of a heating element, battery, or electronic circuit; and
    - (ii) marketed, manufactured, distributed, or sold as:
      - (A) an e-cigarette;
      - (B) e-cigar;
      - (C) e-pipe; or
      - (D) any other product name or descriptor, if the function of the product meets the definition of Subsection (1)(a).
- (2) "Place of public access" means any enclosed indoor place of business, commerce, banking, financial service, or other service-related activity, whether publicly or privately owned and whether operated for profit or not, to which persons not employed at the place of public access have general and regular access or which the public uses, including:
  - (a) buildings, offices, shops, elevators, or restrooms;
  - (b) means of transportation or common carrier waiting rooms;
  - (c) restaurants, cafes, or cafeterias;
  - (d) taverns as defined in Section 32B-1-102, or cabarets;
  - (e) shopping malls, retail stores, grocery stores, or arcades;
  - (f) libraries, theaters, concert halls, museums, art galleries, planetariums, historical sites, auditoriums, or arenas;
  - (g) barber shops, hair salons, or laundromats;
  - (h) sports or fitness facilities;
  - (i) common areas of nursing homes, hospitals, resorts, hotels, motels, "bed and breakfast" lodging facilities, and other similar lodging facilities, including the lobbies, hallways, elevators, restaurants, cafeterias, other designated dining areas, and restrooms of any of these;
  - (j)
    - (i) any child care facility or program subject to licensure or certification under this title, including those operated in private homes, when any child cared for under that license is present; and
    - (ii) any child care, other than child care as defined in Section 26-39-102, that is not subject to licensure or certification under this title, when any child cared for by the provider, other than the child of the provider, is present;
  - (k) public or private elementary or secondary school buildings and educational facilities or the property on which those facilities are located;

- (l) any building owned, rented, leased, or otherwise operated by a social, fraternal, or religious organization when used solely by the organization members or their guests or families;
  - (m) any facility rented or leased for private functions from which the general public is excluded and arrangements for the function are under the control of the function sponsor;
  - (n) any workplace that is not a place of public access or a publicly owned building or office but has one or more employees who are not owner-operators of the business;
  - (o) any area where the proprietor or manager of the area has posted a conspicuous sign stating "no smoking", "thank you for not smoking", or similar statement; and
  - (p) a holder of a club license, as defined in Section 32B-1-102.
- (3) "Publicly owned building or office" means any enclosed indoor place or portion of a place owned, leased, or rented by any state, county, or municipal government, or by any agency supported by appropriation of, or by contracts or grants from, funds derived from the collection of federal, state, county, or municipal taxes.
- (4) "Smoking" means:
- (a) the possession of any lighted or heated tobacco product in any form;
  - (b) inhaling, exhaling, burning, or heating a substance containing tobacco or nicotine intended for inhalation through a cigar, cigarette, pipe, or hookah;
  - (c) except as provided in Section 26-38-2.6, using an e-cigarette; or
  - (d) using an oral smoking device intended to circumvent the prohibition of smoking in this chapter.

Amended by Chapter 171, 2012 General Session

**26-38-2.5 Temporary exemption for certain restrictions on heated tobacco.**

- (1) The definition of "smoking" which prohibits heated tobacco inhaled or exhaled through a hookah does not apply to a place of public access if the place of public access meets the requirements of Subsections (2) and (3).
- (2)
- (a) A place of public access shall certify to the department by July 1, 2012, under penalty of perjury, that it meets the requirements of Subsection (3) and should be exempt under this section.
  - (b) The department:
    - (i) shall verify that the place of public access complies with the provisions of Subsection (3) at the time of the certification under Subsection (2)(a);
    - (ii) may ask the local health department with jurisdiction over the place of public access to verify that the place of public access complies with the provisions of Subsection (3);
    - (iii) shall issue a certificate of exemption if the place of public access is found to comply with the provisions of Subsection (3);
    - (iv) may itself, or through the local health department, verify at other times that the place of public access is in compliance with the provisions of Subsection (3); and
    - (v) may in accordance with Section 63J-1-504, impose a fee to recover the cost of certifying the place of public access as exempt under this section and enforce the provisions of this section.
  - (c) A local health department may impose a reasonable fee to cover the cost of verifying a place of public access complies with the provisions of Subsection (3) at the time of the application under Subsection (2)(a) and during the time of the exemption.

- (d) Notwithstanding Section 26-38-8, if the department or a local health department determines that the place of public access has violated any provision of Subsection (3), the department may impose penalties in accordance with Section 26-23-6.
- (3)
  - (a) A place of public access must meet the following criteria to claim an exemption under this section:
    - (i) prior to January 1, 2012:
      - (A) the place of public access had and continues to have a class C or D liquor license;
      - (B) the place of public access sold a mixture of tobacco and other flavors for the purpose of heating, inhaling and exhaling the tobacco mixture through a hookah pipe in the place of public access; and
      - (C) the sale of the mixture of tobacco and other flavors for use in a hookah pipe in the place of public access constituted at least 10% of the establishment's gross sales; and
    - (ii) during the period of the exemption under this section, the place of public access:
      - (A) shall maintain its class C or D liquor license;
      - (B) shall admit only individuals 21 years of age and older into the place of public access;
      - (C) shall prominently display signs on the premises and in advertisements that disclose the dangers of second hand smoke and inhaling tobacco in accordance with administrative rules adopted by the department;
      - (D) shall require that only tobacco products sold by the place of public access may be heated, inhaled, and exhaled in the place of public access; and
      - (E) may not sell a product for use in a hookah that contains more than 30% tobacco or more than .05% nicotine.
  - (4) The department shall adopt administrative rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, specifying the:
    - (a) written information a facility shall include in a sign posted under Subsection (3)(a)(ii)(C) and in advertisements; and
    - (b) the size and number of signs that shall be posted in a facility.
  - (5) This section sunsets in accordance with Section 63I-1-226.

Enacted by Chapter 171, 2012 General Session

**26-38-2.6 Temporary exemption for certain restrictions on the use of e-cigarettes.**

- (1) The prohibition against the use of an e-cigarette in a place of public access does not apply if:
  - (a) the use of the e-cigarette occurs in the place of public access that is a retail establishment that sells e-cigarettes and the use is for the purpose of:
    - (i) the retailer of an e-cigarette demonstrating to the purchaser of the e-cigarette how to use the e-cigarette; or
    - (ii) the customer sampling a product sold by the retailer for use in an e-cigarette; and
  - (b) the retailer of e-cigarettes:
    - (i) has all required licenses for the possession and sale of e-cigarettes in a place of business;
    - (ii) does not permit a person under the age of 19 to enter any part of the premises of the retail establishment in which the e-cigarettes are sold; and
    - (iii) the sale of e-cigarettes and substances for use in e-cigarettes constitutes at least 75% of the establishment's gross sales.
- (2) This section does not require a county or municipality to issue a license to a person to sell e-cigarettes.
- (3) This section sunsets in accordance with Section 63I-1-226.

Enacted by Chapter 171, 2012 General Session

**26-38-3 Restriction on smoking in public places and in specified places -- Exceptions.**

- (1) Except as provided in Subsection (2), smoking is prohibited in all enclosed indoor places of public access and publicly owned buildings and offices.
- (2) Subsection (1) does not apply to:
  - (a) areas not commonly open to the public of owner-operated businesses having no employees other than the owner-operator;
  - (b) guest rooms in hotels, motels, "bed and breakfast" lodging facilities, and other similar lodging facilities, but smoking is prohibited under Subsection (1) in the common areas of these facilities, including dining areas and lobby areas; and
  - (c) separate enclosed smoking areas:
    - (i) located in the passenger terminals of an international airport located in the city of the first class;
    - (ii) vented directly to the outdoors; and
    - (iii) certified, by a heating, ventilation, and air conditioning engineer licensed by the state, to prevent the drift of any smoke to any nonsmoking area of the terminal.

Amended by Chapter 383, 2009 General Session

**26-38-3.5 Smoking ban exemption for Native American ceremony.**

- (1) A person is exempt from the restrictions of Section 26-38-3 if the person:
  - (a) is a member of an American Indian tribe whose members are recognized as eligible for the special programs and services provided by the United States to American Indians who are members of those tribes;
  - (b) is an American Indian who actively practices an American Indian religion, the origin and interpretation of which is from a traditional American Indian culture;
  - (c) is smoking tobacco using the traditional pipe of an American Indian tribal religious ceremony, of which tribe the person is a member, and is smoking the pipe as part of that ceremony; and
  - (d) the ceremony is conducted by a pipe carrier, Indian spiritual person, or medicine person recognized by the tribe of which the person is a member and the Indian community.
- (2) This section takes precedence over Section 26-38-3.
- (3) A religious ceremony using a traditional pipe under this section is subject to any applicable state or local law, except as provided in this section.

Enacted by Chapter 125, 1995 General Session

**26-38-6 Local ordinances.**

- (1) This chapter supersedes any ordinance enacted by the governing body of a political subdivision that restricts smoking in a place of public access as defined in Section 26-38-2 and that is not essentially identical to the provisions of this chapter.
- (2) This chapter does not supersede an ordinance enacted by the governing body of a political subdivision that restricts smoking in outdoor places of public access which are owned or operated by:
  - (a) a political subdivision as defined in Section 17B-1-102;
  - (b) a state institution of higher education; or
  - (c) a state institution of public education.

Amended by Chapter 44, 2007 General Session

**26-38-7 Enforcement action by proprietors.**

- (1) An owner or the agent or employee of the owner of a place where smoking is prohibited under Subsection 26-38-3(1) who observes a person smoking in apparent violation of this chapter shall request the person to stop smoking.
- (2) If the person fails to comply, the proprietor or the agent or employee of the proprietor shall ask the person to leave the premises.

Amended by Chapter 171, 2012 General Session

**26-38-8 Penalties.**

- (1) A first violation of Section 26-38-3 is subject to a civil penalty of not more than \$100.
- (2) Any second or subsequent violation of Section 26-38-3 is subject to a civil penalty of not less than \$100 and not more than \$500.

Amended by Chapter 218, 2010 General Session

**26-38-9 Enforcement of chapter.**

- (1) The state Department of Health and local health departments shall:
  - (a) enforce this chapter and shall coordinate their efforts to promote the most effective enforcement of this chapter; and
  - (b) impose the penalties under Section 26-38-8 in accordance with this section.
- (2) When enforcing this chapter, the state Department of Health and the local health departments shall notify persons of alleged violations of this chapter, conduct hearings, and impose penalties in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
- (3) Civil penalties collected under this section by:
  - (a) a local health department shall be paid to the treasurer of the county in which the violation was committed; and
  - (b) the state Department of Health shall be deposited in the General Fund.

Amended by Chapter 382, 2008 General Session